



01 OCT 2002

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In re Application of :  
Hirsch et al. :  
Application No. 10/088426 : DECISION ON  
PCT No.: PCT/EP00/06174 :  
Int. Filing Date: 03 July 2000 : PAPERS UNDER  
Priority Date: 17 September 1999 :  
Atty. Docket No.: 22156 : 37 CFR 1.42  
For: Device For Thermally Treating :  
Granular Solid Matter :  
:

This is in response to the "Communication" filed on 24 June 2002 which is being treated as a petition under 37 CFR 1.181.

### BACKGROUND

This international application was filed on 03 July 2000, and claimed a priority date of 17 September 1999. The International Bureau transmitted a copy of the published international application to the USPTO on 29 March 2001. A Demand electing the United States was filed before the expiration of 19 months from the priority date. Accordingly, the 30 month time period to file the basic national fee in the U.S. expired as of midnight on 17 March 2002.

On 15 March 2002, applicants filed *inter alia* the basic national fee.

On 18 June 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the filing of an executed oath or declaration and a surcharge under 37 CFR 1.492(e).

The instant "Communication" was filed on 24 June 2002.

### DISCUSSION

The instant "Communication" is accompanied by copies of a Transmittal Letter (Form PTO-1390) including a fee calculation sheet, a declaration and a return postcard receipt itemizing the "PCT Transmittal" and the "Declaration and Power of Attorney" and stamped as received by the USPTO on "JUN 12 2002."

Review of the application file reveals the presence of two executed declarations

received on 12 June 2002. Accordingly, the petition under 37 CFR 1.181 is dismissed as moot.

Inspection of the declaration reveals that it has been signed by "Kristina STOLARSKI, Executrix" on behalf of deceased joint inventor Eberhard Stolarski. 37 CFR 1.42 provides in part that

In case of the death of the inventor, the legal representative (executor, administrator, etc.) Of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Meanwhile, 37 CFR 1.497(b)(2), as amended effective 08 September 2000, provides that

If the person making the oath or declaration is not the inventor (§§ 1.42, 1.43 or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

Former § 1.44 required that proof of the authority of the legal representative be submitted. Effective 08 September 2000, § 1.44 was removed and reserved. The requirement to submit proof of legal authority was thereby eliminated. Thus, the signature and accompanying identification of the legal representative is sufficient to establish that the legal representative may make application on behalf of the deceased inventor.

Review of the copy of the declaration filed on 12 June 2002 reveals that it was executed by Kristina Stolarski, acting in the capacity of legal representative for Eberhard Stolarski in accordance with 37 CFR 1.42. The declaration includes citizenship, residence and post office address information for Eberhard Stolarski, but does not include the citizenship, residence and mailing address of the legal representative. As such, the declaration is not in compliance with 37 CFR 1.497(b)(2). Accordingly, it would not be appropriate to accord the application status pursuant to 37 CFR 1.42 on the basis of the present record.

### DECISION

The petition under 37 CFR 1.181 is **DISMISSED AS MOOT**.

The papers under 37 CFR 1.42 are **DISMISSED**, without prejudice.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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